

This dispute stems from the Regular Hearing wherein the claimant's attorney requested an opinion from the Administrative Law Judge regarding the admissibility of

certain medical reports from Dr. Paul Stern of Albuquerque, New Mexico. Dr. Stern was appointed on March 9, 1994 by the Administrative Law Judge to perform an independent medical examination upon the claimant. The claimant then requested an opinion from the Administrative Law Judge on whether this medical report was admissible without the necessity of the doctor's deposition pursuant to K.S.A. 44-510e, K.S.A. 44-516 and K.S.A. 44-519.

The Administrative Law Judge advised claimant's attorney that the medical evidence would be considered according to the statutes of the State of Kansas and the rules of the Director of Workers Compensation. The objection by claimant's attorney appears to lie with the Administrative Law Judge's failure to provide a specific interpretation of these statutes and Director's Rules.

The Appeals Board has the authority to review decisions of Administrative Law Judges from non-final awards in two instances. First, under K.S.A. 44-534a, the Appeals Board is allowed to review preliminary hearing decisions of an Administrative Law Judge wherein the following issues are in dispute: 1) Whether the employee suffered an accidental injury; 2) whether the injury arose out of and in the course of the employee's employment; 3) whether notice is given or claim timely made; and, 4) whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Appeals Board.

The Appeals Board further has the authority to review decisions of an Administrative Law Judge under K.S.A. 44-551 wherein it is alleged and shown that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested. In this instance, the Administrative Law Judge simply advised claimant's attorney that he intended to follow the statutes and the administrative regulations under Workers Compensation when ruling on the admissibility of certain independent medical examination reports. While this may not have been the absolutely clarifying answer desired by claimant's attorney, it nevertheless is within the Administrative Law Judge's parameters and, indeed, is his obligation to follow both the statutes and the administrative regulations in deciding workers compensation matters. Nothing under the Workers Compensation Act obligates the Administrative Law Judge to provide a preliminary interpretation of these laws. While this finding by the Administrative Law Judge may have left claimant's attorney with some confusion as to how to proceed, the Appeals Board finds no basis for review of this decision until such time as a final award is rendered.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Thomas F. Richardson, in the transcript dated February 21, 1995, is a non-reviewable, non-final decision by the Administrative Law Judge and the Appeals Board lacks jurisdiction to consider same.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Douglas C. Hobbs, Wichita, KS
David Heinemann, Garden City, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director